

FORM PTO-1390 (Modified)  
(REV 10-95)

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

ATTORNEY'S DOCKET NUMBER

## TRANSMITTAL LETTER TO THE UNITED STATES

23232.0002

DESIGNATED/ELECTED OFFICE (DO/EO/US)

U.S. APPLICATION NO. (IF KNOWN, SEE 37 CFR

CONCERNING A FILING UNDER 35 U.S.C. 371

09/462955

INTERNATIONAL APPLICATION NO.

INTERNATIONAL FILING DATE

PRIORITY DATE CLAIMED

PCT/EP98/04346

13 July 1998

16 July 1997

TITLE OF INVENTION

SPECIFIC VIRUS DNA FRAGMENTS, AND THEIR USE AS PROMOTERS

APPLICANT(S) FOR DO/EO/US

ROHDE, Wolfgang; BECKER, Dieter; RANGLES, John W.; HEHN, Alain; SALAMINI, Francesco

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☒ This is a **FIRST** submission of items concerning a filing under 35 U.S.C. 371.
2. ☐ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a filing under 35 U.S.C. 371.
3. ☒ This is an express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1).
4. ☒ A proper Demand for International Preliminary Examination was made by the 19th month from the earliest claimed priority date.
5. ☒ A copy of the International Application as filed (35 U.S.C. 371 (c) (2))
  - a. ☐ is transmitted herewith (required only if not transmitted by the International Bureau).
  - b. ☒ has been transmitted by the International Bureau.
  - c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☒ A translation of the International Application into English (35 U.S.C. 371(c)(2)).
7. ☒ A copy of the International Search Report (PCT/ISA/210).
8. ☒ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371 (c)(3))
  - a. ☐ are transmitted herewith (required only if not transmitted by the International Bureau).
  - b. ☐ have been transmitted by the International Bureau.
  - c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
  - d. ☒ have not been made and will not be made.
9. ☐ A translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
10. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371 (c)(4)).
11. ☒ A copy of the International Preliminary Examination Report (PCT/IPEA/409).
12. ☒ A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371 (c)(5)).

## Items 13 to 18 below concern document(s) or information included:

13. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
14. ☐ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
15. ☒ A **FIRST** preliminary amendment.  
A **SECOND** or **SUBSEQUENT** preliminary amendment.
16. ☐ A substitute specification.
17. ☐ A change of power of attorney and/or address letter.
18. ☒ Certificate of Mailing by Express Mail
19. ☒ Other items or information:

Check in the amount of \$1,100.00 for filing fees; return-receipt postcard; Certificate of Express Mailing No. EL348124974US.

U.S. APPLICATION NO. (IF KNOWN) SEE 37 CFR

09/462955

INTERNATIONAL APPLICATION NO.

PCT/EP98/04346

ATTORNEY'S DOCKET NUMBER

23232.0002

20. The following fees are submitted:

**BASIC NATIONAL FEE ( 37 CFR 1.492 (a) (1) - (5) ) :**

- ☐ Search Report has been prepared by the EPO or JPO ..... \$840.00
- ☐ International preliminary examination fee paid to USPTO (37 CFR 1.482) ..... \$670.00
- ☐ No international preliminary examination fee paid to USPTO (37 CFR 1.482) but international search fee paid to USPTO (37 CFR 1.445(a)(2)) ..... \$760.00
- ☒ Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO ..... \$970.00
- ☐ International preliminary examination fee paid to USPTO (37 CFR 1.482) and all claims satisfied provisions of PCT Article 33(2)-(4) ..... \$96.00

**ENTER APPROPRIATE BASIC FEE AMOUNT =****CALCULATIONS PTO USE ONLY**

Surcharge of \$130.00 for furnishing the oath or declaration later than months from the earliest claimed priority date (37 CFR 1.492 (e)).

☐ 20 ☒ 30

\$970.00

\$130.00

CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE
Total claims	10 - 20 =	0	x \$18.00
Independent claims	1 - 3 =	0	x \$78.00
Multiple Dependent Claims (check if applicable).			<input type="checkbox"/>
<b>TOTAL OF ABOVE CALCULATIONS</b>			<b>=</b>
Reduction of 1/2 for filing by small entity, if applicable. Verified Small Entity Statement must also be filed (Note 37 CFR 1.9, 1.27, 1.28) (check if applicable).			<input type="checkbox"/>
<b>SUBTOTAL</b>			<b>=</b>
Processing fee of \$130.00 for furnishing the English translation later than months from the earliest claimed priority date (37 CFR 1.492 (f)).			<input type="checkbox"/> 20 <input type="checkbox"/> 30 +
<b>TOTAL NATIONAL FEE</b>			<b>=</b>
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31) (check if applicable).			<input type="checkbox"/>
<b>TOTAL FEES ENCLOSED</b>			<b>=</b>
			<b>Amount to be: refunded</b>
			<b>charged</b>

☒ A check in the amount of \$1,100.00 to cover the above fees is enclosed.☐ Please charge my Deposit Account No. in the amount of to cover the above fees.  
A duplicate copy of this sheet is enclosed.☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 14-0629 A duplicate copy of this sheet is enclosed.**NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.**

SEND ALL CORRESPONDENCE TO:

Gwendolyn D. Spratt, Esq.  
 NEEDLE & ROSENBERG, P.C.  
 127 Peachtree Street, N.E., Suite 1200  
 Atlanta, Georgia 30303 U.S.A.  
 (404) 688 0770

Gwendolyn D. Spratt

SIGNATURE

Gwendolyn D. Spratt

NAME

36,016

REGISTRATION NUMBER

14 January 2000

DATE

ATTORNEY DOCKET NO. 23232.0002  
PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of )  
Becker et al. )  
Serial No.: 35 U.S.C. § 371 application )  
from PCT/EP98/04346 )  
Filed: Concurrently herewith )  
For: SPECIFIC VIRUS DNA FRAGMENTS, )  
AND THEIR USE AS PROMOTERS )

**PRELIMINARY AMENDMENT**

BOX PCT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

NEEDLE & ROSENBERG, P.C.  
Suite 1200, The Candler Building  
127 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1811

January 14, 2000

Sir:

**PLEASE ENTER THE FOLLOWING PRELIMINARY AMENDMENT:**

Please cancel claims 1-10 without prejudice.

Please add the following new claims:

--1. CFDV virus DNA fragment which encompasses the stem-loop structure, but not the translation start for the open reading frame ORF1.

2. CFDV virus DNA fragment according to Claim 1, which additionally does not encompass the translation start for the open reading frame ORF2.
3. CFDV virus DNA fragment according to Claim 1, which additionally encompasses the repeated RPT structures, the 52-bp-sequence and the TATAA sequence.
4. CFDV virus DNA fragment according to Claim 1, which encompasses the nucleotides 211 to 991, 409 to 991, 611 to 991 or 711 to 991, where, for the purpose of numbering the nucleotides, the 5'-end of the linearized DNA resulting from cleaving the circular CFDV DNA with the restriction endonuclease *Xho*I, has been assigned the position 1.
5. DNA fragment, which is derived from one of the CFDV virus DNA fragments according to Claim 1 by substituting, deleting, inserting or modifying individual nucleotides or smaller groups of nucleotides and has a promoter activity which is comparable with that of the starting fragment.
6. Use of one or more DNA fragments according to Claim 1 as promoter.
7. Use of one or more DNA fragments according to Claim 1 as promoter in bacteria, yeasts or fungi.

8. Use of one or more DNA fragments according to Claim 1 as promoter for the tissue-specific expression of genes in transgenic plants.
9. Use of one or more DNA fragments according to Claim 8 for the phloem-specific expression of genes in transgenic plants.
10. Use of one or more DNA fragments according to Claim 1 for the generation of chimeric constructs for the transient and stable expression.
11. Transgenic plants, parts of plants, transformed plants, yeast or bacterial cells obtained using a DNA according to Claim 1.--


REMARKS

Newly submitted claims 1-11 correspond to claims 1-10 in the international application, except that the format and dependencies have been changed to reflect the claim formatting and dependency requirements of U.S. law. Additionally, claim 7 recites “fungi” in addition to bacteria and yeast, as supported in the specification, for example, at page 5, lines 13-15 and 25-27. No new matter is added in the new claims, and their entry and examination are respectfully requested.

Pursuant to the above amendments and remarks, consideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

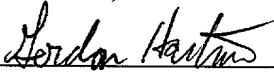


Gwendolyn D. Spratt  
Registration No. 36,016

Suite 1200, The Candler Building  
127 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1811  
(404) 688-0770

CERTIFICATE OF EXPRESS MAILING UNDER 37 C.F.R. § 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, No. EL348124974US in an envelope addressed to: Box PCT, Assistant Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.



Gordon Hartman

01/14/00

Date

4/ppts

5 Specific virus DNA fragments, and their use as  
promoters

It is generally known that genetic engineering techniques allow individual genes to be transferred into the genome of organisms, such as microorganisms, yeasts or plants, in a targeted manner. This technique, which is known as transformation or, in the case of higher cells, also as transfection, is carried out routinely by various routes, for example by particle gun bombardment (cf. M.E. Fromm, F. Morrish, C. Armstrong, R. Williams, J. Thomas and T.M. Klein: "Inheritance and expression of chimeric genes in the progeny of transgenic maize plants", Bio/Technology 8: 833-839, 1990), naked DNA transfer (cf. P. Meyer, I. Heidmann, G. Forkmann and H. Saedler: "A new petunia flower colour generated by transformation of a mutant with a maize gene", Nature 330: 677-678, 1987) or by Agrobacterium-mediated stable integration of genes or gene segments into the genome of a recipient plant. As an alternative for the chromosomal integration of foreign genes, it is possible, for example, to use extrachromosomally replicating vectors in order to express foreign genes in a desired organism without integration. Examples of extrachromosomally replicating vectors which are available for plants are those developed from plant viruses (cf., for example, J.W. Davies and J. Stanley: "Geminivirus genes and vectors", Trends Genet. 5: 77-81, 1989). To do this, the foreign genes to be expressed in the chosen organisms must be brought under the control of regulatory signals (promoter, terminator) which are suitable for this organism and which ensure either constitutive, tissue- and/or development-specific transcription. Moreover, it is desirable to provoke an

009750" 5523460

increased mRNA synthesis of the foreign gene by using a strong promoter.

A known promoter for plants which meets the requirement for a strong constitutive promoter and which is therefore predominantly employed in the transformation of plants (cf. R. Walden: "Genetic Transformation in Plants", Open University Press, Milton Keynes, 1988) is the 35S RNA promoter of the cauliflower mosaic virus (CaMV).

The disadvantage of the known CaMV 35S promoter is its low activity in monocots and in the phloem tissue.

The German patent DE 43 06 832 of the Max-Planck-Gesellschaft zur Förderung der Wissenschaften and Rohde et al., Plant Molecular Biology 27: 623-628, 1995 have described the use of a DNA which is derived from the CFDV virus (coconut foliar decay virus), which attacks the coconut palm Cocos nucifera, and whose structure is shown in Figures 1, 3A and 3B of the Patent Specification as a viral phloem-specific promoter for the tissue-specific expression of genes in transgenic plants.

The CFDV virus is located in the vascular system of the plant (cf. J.W. Randles et al.: "Localization of coconut foliar decay virus in coconut palm", Ann. Appl. Biology 1992, 601-617). A DNA associated with the disease symptoms and the occurrence of viral particles has already been cloned, sequenced and its structure determined at an earlier point in time (cf. W. Rohde et al.: "Nucleotide sequence of a circular single-stranded DNA associated with coconut foliar decay virus", Virology 176: 648-651, 1990). CFDV is a viral phytopathogen with a genome consisting of covalently closed-circular simplex DNA. Rohde et al., Virology 176: 648-651, 1990 described a DNA molecule of CFDV with a size of 1291 nucleotides and deletion mutants thereof. CFDV is not a representative of the geminivirus group, but probably constitutes the prototype of the DNA virus group of the "circoviruses".

5 A variety of mechanisms might be responsible for the phloem specificity of this virus. For example, it was demonstrated for PLRV (potato leafroll virus), a representative of the luteovirus group, that a suppressor tRNA which the virus requires for its gene expression only exists in the phloem, which prevents the virus from spreading beyond this tissue (Rohde et al., unpublished data).

10 The object of the invention is to provide a promoter which is stronger compared with the abovementioned promoters and which is suitable, in particular, for the tissue-specific expression of genes in transgenic plants and is active in both monocots and dicots, and also in the phloem tissue.

15 It has been found that the set object can be achieved with specific virus DNA fragments which are derived from the DNA of the CFDV virus in the manner shown in Claim 1.

20 The invention therefore relates to the virus DNA fragments characterized in the claims and to their use as promoters.

25 Surprisingly, it has been found that the so-called "stem-loop" structure, which is generally considered to be an element required for the replication of CFDV and the geminiviruses only, has a decisive effect on transcription. Thus, constructs for the transient expression of a reporter gene in potato protoplasts are only active when the "stem-loop" structure is retained. Moreover, it has been found that  
30 the presence of the translation start(s) for the two open CFDV reading frames ORF1 and/or ORF2 adversely affects the translation of a reporter gene.

35 Accordingly, the CFDV fragments according to the invention are characterized by the complete stem-loop structure and by the absence of the translation start(s) for the open reading frames ORF1 and/or ORF2 of CFDV.

Relative to the 5'-end of the linearized DNA, which results from cleaving the circular CFDV DNA with

09462955-051600

the restriction endonuclease XhoI, as position 1, the stem-loop structure encompasses the nucleotides 941 to 971; the open CFDV reading frames ORF1 and ORF2 encompass the nucleotides 1004 to 583, and 1215 to 383, respectively.

To generate CFDV DNA fragments according to the invention, the skilled worker resorts to well-known techniques such as, for example, suitable cleavage sites of restriction endonucleases on the CFDV DNA, or the polymerase chain reaction technique which allows, starting from a full-length CFDV DNA construct, CFDV DNA fragments of the desired length to be amplified by means of specific primers. To this end, the primers are synthesized to suit the desired CFDV fragment in a manner known per se, using the nucleotide sequence of the CFDV virus, more specifically the nucleotide sequences in the region of the 5'- or 3'-ends of the desired fragment, described by W. Rohde et al. in Virology 176: 648-651, 1990.

Particularly preferred CFDV DNA fragments according to the invention are the DNA fragments with the nucleotides 211 to 991, 409 to 991, 611 to 991 or 711 to 991.

Compared with the promoters described in German Patent DE 43 06 832, the novel constructs, surprisingly, show an up to four-fold increase in activity, and in comparison with the CaMV 35S promoter an up to two times higher activity in plant cells. A strong and specific expression of genes under the control of these promoters according to the invention is observed, in particular, in the phloem tissue. Accordingly, an important field of application of the invention is, for example, the phloem-specific expression of luteoviral genes with the aim of generating virus-resistant plants. Luteoviruses such as, for example, PLRV (potato leafroll virus) are phloem-specifically replicating viruses, and the CaMV 35S promoter which has been used, inter alia, to date only shows weak activity in the phloem tissue.

A further surprising finding is the fact that CFDV DNA fragments according to the invention also show a markedly higher activity in bacteria than the CaMV 35S promoter, which is also active in bacteria (Assaad and Signer, Molecular and General Genetics 223: 517-520, 1990). Thus, the CFDV construct pRT CF4 shows an up to 60 times higher activity in E. coli than the CaMV 35S promoter. Owing to this activity, the CFDV promoters according to the invention are also suitable for use in bacterial systems, for example for the production of pharmacologically active proteins or peptides.

Other studies suggest that these CFDV fragment promoters also have a high activity in yeasts and fungi.

Equally, the invention relates to DNA fragments which are derived from the above-defined CFDV fragments by substituting, deleting, inserting or modifying individual nucleotides or smaller groups of nucleotides and have a promoter activity which is comparable with that of the starting fragments, and their use as promoters. A comparable promoter activity can be, for example, a promoter activity which is up to 20% higher or lower than that of the starting fragment.

The invention furthermore relates to transformed plant, bacterial and yeast cells obtained using the DNA fragments according to the invention.

The figures show:

Fig. 1: the schematic structure of the CFDV DNA with six possible open reading frames (ORF1-6) and the so-called stem-loop structure. The arrow indicates the XhoI cleavage site.

Fig. 2: the so-called stem-loop structure; it shows homology to a similar structure in the genome of geminiviruses and is probably responsible for the replication of the virus.

Fig. 3: the schematic arrangement of possible signals for transcriptional regulation on the CFDV DNA which has been linearized by cleavage at the *Xho*I cleavage site. The arrows indicate the larger open reading frames ORF1, ORF2, ORF3 and ORF4 on the CFDV DNA. The position marked "TATAA" comprises a possible TATA box, and the abbreviation RPT, which is assigned to two arrow heads, suggests a repeated sequence; the stem-loop structure is marked "SL".

Fig. 4: the sequence of the two repeated sequences (RPT) and their arrangement as stable stem-loop structures with the customary CGAAG-loop sequence.

Fig. 5: a schematic representation of the position, on the CFDV DNA linearized by cleavage at the *Xho*I cleavage site, of various CFDV fragments used for constructs for determining promoter strength. The arrow heads show the position of the two directly repeated sequences (RPT) upstream of a 52-bp-element (black box). This element shows 70% sequence identity between CoYMV and CFDV. The arrows indicate larger open reading frames in the three reading frames 1, 2 and 3 (ORF1, ORF2, ORF3) of the CFDV DNA. The abbreviation TATAA suggests a possible TATA box, and the position of the stem-loop structure is also given. *Xho*I, *Afl*III and *Sty*I mark the position of cleavage sites for restriction endonucleases.

Amongst the CFDV fragment promoters shown in schematic form, those marked "pRT CF2", "pRT CF3", "pRT CF4" and "pRT CF5" are DNA fragments according to the invention. The CFDV constructs pRT CF7, pRT CF8, pRT CF9 and pRT CF10 which are not according to the invention and which all still contain the TATAA box but are deleted

on the 3'-end of the CFDV sequence in such a way that the stem-loop structure can no longer be formed, are shown for comparison purposes.

The construct pRT Xho/Sty, which encompasses the translation start of the open reading frame ORF1 and which is disclosed in German Patent P 43 06 832, and the corresponding CaMV 35S construct marked "35S" also serve for comparison purposes.

Fig. 6: the schematic structure of the starting plasmid pRTsynLUC.

Studies on the promoter strength of various CFDV fragments in plants and bacteria

In order to study promoter region and promoter strength by the transient expression in plant cells and bacteria, fragments of the CFDV DNA starting from a full-length CFDV construct (Rohde et al., Plant Mol. Biol. 27: 623-628, 1995) were first amplified by means of the polymerase chain reaction (PCR) and, as subgenomic fragments, fused transcriptionally with the  $\beta$ -glucuronidase gene (GUS) in the plasmid vector pRT2synGUSAH. The resulting plasmids were compared in transient expression experiments with a corresponding CaMV 35S construct and with constructs with CFDV DNA fragments which are not according to the invention.

Unless otherwise indicated, all process steps indicated hereinbelow were carried out by standard methods as they are described, for example, by Sambrook et al., Molecular Cloning, A Laboratory Manual, Cold Spring Harbor Laboratory, Cold Spring Harbor, New York, USA (1989).

Use example

- I. Generation of the CFDV fragment GUS constructs for transient expression

The starting plasmid used was the full-length CFDV construct described by Rohde et al. in Plant Mol. Biol. 27: 623-628, 1995. The CFDV genome was amplified with the aid of specific primers which contained additional restriction cleavage sites, viz. *Hind*III for the 5'-end and *Nco*I for the 3'-end of the amplified DNA molecules. Depending on the choice of the primers, CFDV fragments were obtained whose length was fixed. The primers were synthesized with reference to the nucleotide sequence of the CFDV virus described by W. Rohde et al. in Virology 176: 648-651, 1990, more specifically with the aid of the nucleotide sequences in the region of the 5'- and 3'-ends of the desired fragment in order to obtain the CFDV fragments given in Table 1 below by subsequent DNA amplification. In addition, DNA sections were added, to the primers, which contained the abovementioned additional restriction cleavage sites.

The amplification products were digested with *Hind*III/*Nco*I, and the cleavage products were separated in an agarose gel and the desired DNA fragments isolated by electroelution.

The CFDV fragments were then ligated into vector pRT2synGUSAH which had previously been prepared from the plasmid pRTsynLUC (Fig. 6; Turner et al., Arch. Virol. 137: 123-132, 1994). To this end, the luciferase gene was removed by *Nco*I/*Bam*HI digestion and replaced by the GUS gene with *Nco*I/*Bam*HI ends. Finally, the *Hind*III cleavage site was deleted on the 35S 3'-end by partially cleaving the plasmid with *Hind*III, filling in the cleavage site and circularizing the linear molecule by religation to give pRT2synGUSAH. An *Nhe*I cleavage site was thus created instead of the *Hind*III cleavage site. The 35S promoter was removed from this plasmid by digestion with *Hind*III/*Nco*I and replaced by the corresponding *Hind*III/*Nco*I CFDV fragments.

The CFDV fragments contained as promoters in the generated CFDV fragment GUS constructs are shown with respect to their exact position on the CFDV DNA in

Table 1 and, diagrammatically, in Figure 4. The nucleotide positions indicated in Table 1 relate to a CFDV DNA which had been linearized by cleavage with the restriction endonuclease *Xho*I and whose 5'-end had been assigned the position 1. Finally, the corresponding DNA sections for the stem-loop structure, the open reading frames ORF1 and ORF2 and other structural elements of the CFDV DNA were also included.

The CFDV fragments contained in Table 1 and shown schematically in Figure 4, which are marked "pRT CF2 - 5", are CFDV fragments according to the invention. The CFDV fragments marked "pRT CF7-10" are CFDV fragments which are not according to the invention; while they still retain the TATAA box, their CFDV sequence is deleted at the 3'-end in such a way that the stem-loop structure can no longer be formed.

TABLE 1

CONSTRUCT	5'-end of the CFDV fragment	3'-end of the CFDV fragment
pRT CF2	211	991
pRT CF3	409	991
pRT CF4	611	991
pRT CF5	711	991
pRT CF7	211	962
pRT CF8	409	962
pRT CF9	611	962
pRT CF10	711	962
pRT <i>Xho</i> I/ <i>Sty</i> I	1	1157
RPT1	655	676
RPT2	682	701
52-bp-sequence	734	785
TATA-box	934	939
SL	941	971
ORF1	1004	583
ORF2	1215	383

The constructs pRT CF XS and pRT 35S, which contain the GUS reporter gene in connection with the *XhoI/StyI* fragment of the CFDV virus (Table 1) or the CaMV 35S promoter and which are also employed for comparison purposes, were generated as described in German Patent P 43 06 832.

## II. Transient expression of CFDV fragment GUS constructs in tobacco protoplasts

### II.1. Protoplast media

K3: Macro elements: Micro elements:

25 mM KNO <sub>3</sub>	100 µM H <sub>3</sub> BO <sub>3</sub>
1 mM NaH <sub>2</sub> PO <sub>4</sub>	130 µM MnSO <sub>4</sub>
6 mM CaCl <sub>2</sub>	40 µM ZnSO <sub>4</sub>
3 mM NH <sub>4</sub> NO <sub>3</sub>	5 µM KCl
1 mM (NH <sub>4</sub> ) <sub>2</sub> SO <sub>4</sub>	1 µM CuSO <sub>4</sub>
1 mM MgSO <sub>4</sub>	1 µM CoCl <sub>2</sub>

Iron in EDTA: Vitamin solution:

1 µM FeSO <sub>4</sub>	270 µM glycine
1 µM Na <sub>2</sub> EDTA	160 µM nicotinic acid
	100 µM pyridoxin
	3 µM thiamine

Carbohydrates: Hormones:

400 mM sucrose	5.5 µM NAA
1.7 mM xylose	1.0 µM kinetin
0.5 mM inositol	

pH 5.6 osmotic value: 600 mOs

W5: 150 mM NaCl  
125 mM CaCl<sub>2</sub>  
5 mM KCl  
5 mM glucose

pH 5.6 - 6.0

0046955-051600

MaMg: 450 mM mannitol  
15 mM MgCl<sub>2</sub>  
0.1% MES

5

pH 5.6

## II.2. Preparation of tobacco protoplasts

(cf. I. Negrutiu et al., "Fusion of plant  
10 protoplasts: a study using auxotrophic mutants of  
Nicotiana plumbagenifolia, viviani", Theor. Appl.  
Genet. 72: 279-286, 1987).

Leaves (10 g) of tissue-culture-grown Nicotiana  
tabacum plants (var. SR1) were incubated in 100 ml of  
15 enzyme solution for 16 hours at 25°C in the dark, and  
the resulting protoplasts were separated from coarse  
tissue residues by screens (mesh size 100 µM). The  
protoplasts were purified further by repeated  
centrifugations and washing with K3 medium, during  
20 which process the viable protoplasts concentrated in  
each case at the surface, and, finally, by resuspension  
in W5 medium and sedimentation by centrifugation. The  
protoplast sediment was taken up in MaMg buffer and  
brought to a concentration of 10<sup>6</sup>/ml.

25

II.3. Protoplast transformation (cf. C. Maas and W.  
Werr: "Mechanism and optimized conditions for  
PEG mediated DNA-transfection into plant  
protoplasts", Plant Cell Rep. 8: 148-151,  
30 1989).

15 µl of plasmid/carrier DNA (corresponding to  
10 µg of CFDV fragment GUS construct or CaMV 35S GUS  
plasmid DNA and 50 µg of calf thymus DNA) were added to  
35 500-µl batches of protoplasts, and the suspension was  
incubated for ten minutes at room temperature, then  
carefully underlaid with PEG solution (40% PEG 4000,  
0.1 M Ca(NO<sub>3</sub>)<sub>2</sub>, 0.4 M mannitol) and immediately rotated  
until all the streaks had disappeared. After incubation

for a further 30 minutes, 4 ml of K3 medium (with antibiotics and kinetins) were added, and the individual transformation batches were kept for 20 hours at 25°C in the dark.

5

#### II.4. Analysis of the protoplast transformations

After 20 hours, the protoplast batches were made up to 10 ml with W5 medium, centrifuged, the  
10 sedimented protoplasts were resuspended in 1 ml of W5 medium and then recentrifuged, and frozen in liquid nitrogen. To determine the protein quantity and GUS enzyme activity, the protoplasts were comminuted in a pestle and mortar in 50 µl of GUS extraction buffer,  
15 and the GUS activity was determined fluorimetrically with 4-methylumbelliferyl-β-D-glucuronide (4-MUG; cf. R.A. Jefferson: "Assaying chimeric genes in plants: the GUS gene fusion system", Plant Mol. Biol. Rep. 5: 387-405, 1987). To this end, the batch was incubated with  
20 4-methylumbelliferyl-β-D-glucuronide (4-MUG) for 1 hour at 37°C. The protein quantity was determined by the method of Bradford (cf. M. Bradford: "A rapid and sensitive method for the quantitation of microgramme quantities of protein utilizing the principle of  
25 protein dye binding", Anal. Biochem. 72: 248-254, 1976).

The results obtained for the individual constructs are shown in Table 2 below. The results in Table 2 are given as activity percentage of the  
30 individual CFDV constructs based on the activity of the CaMV 35S promoter construct (pRT 35S) which was set as 100%. The figures shown are the results of two or three independent experiments and also the mean of those results. The construct pRT CF XS contains the fragment  
35 disclosed in German Patent P 43 06 832, which is not according to the invention and which is obtained by cleaving the CFDV DNA by means of the restriction endonucleases XhoI and StyI and additionally

encompasses the translation start of the open reading frame ORF1.

TABLE 2

5

Construct	Exp. 1	Exp. 2	Exp. 3	Mean
pRT CF2	-	48	67	57.5
pRT CF3	20	-	21	20.5
pRT CF4	204	59	36	118
pRT CF5	25	30	18.9	24.6
pRT CF7	0	0	-	0
pRT CF8	0	0	-	0
pRT CF9	0	0	-	0
pRT CF10	0	0	-	0
pRT CF XS	9	0.8	1.2	3.6
pRT 35S	100	100	100	100

10 As can be seen from the results shown in Table 2, the CFDV fragments according to the invention show a markedly higher promoter activity in tobacco protoplasts than the *XhoI/StyI* CFDV fragment promoter of the construct pRT CF XS, which additionally contains the translation start of the open reading frame ORF1 and has been described in German Patent P 43 06 832.

15 The constructs pRT CF 7 - 10, which are not according to the invention, show no activity whatsoever in tobacco protoplasts, which demonstrates that the facility of forming the stem-loop structure in the region of the nucleotides 941 to 971 in the CFDV fragment promoter is essential for the promoter  
20 activity.

In tobacco protoplasts, the construct pRT CF4 according to the invention moreover shows a promoter activity which is comparable with that of the CaMV 35S promoter (cf. construct pRT 35S).

25

III. Transient expression of CFDV fragment GUS constructs in *E. coli*

### III.1. Transformation of *E. coli*

Competent *E. coli* JM109 cells were transformed with the corresponding plasmid DNAs by electroporation and selected on LB plates (with added ampicillin).

### III.2. Analysis of the *E. coli* transformations

Individual colonies were allowed to grow overnight in 2 ml of LB medium (with added ampicillin). Batches of 10  $\mu$ l of bacterial suspension were digested with 35  $\mu$ l of extraction buffer (50 mM sodium phosphate buffer, pH 7; 10 mM EDTA; 0.1% Triton X-100), treated with 5  $\mu$ l 10x 4-MUG solution (4-methylumbelliferyl- $\beta$ -D-glucuronide; cf. R.A. Jefferson, Plant Mol. Biol. Rep. 5: 387-405, 1987), and incubated for 10 minutes at 37°C or, to measure the course in time of the GUS activity, for 10 minutes, 20 minutes or 47 minutes at 37°C. The reaction was stopped by adding 1 ml of 0.2 M Na<sub>2</sub>CO<sub>3</sub> buffer, and the GUS activity was determined fluorimetrically with 4-MUG. The protein quantity was determined by the method of Bradford (cf. M. Bradford, Anal. Biochem. 72: 248-254, 1976).

The results obtained for the individual constructs are shown in Tables 3A and 3B which follow. The results in Table 3A are indicated as percentage activity based on the activity of the CFDV promoter construct pRT CF4, which, being the overall highest promoter activity achieved in this example, was set as 100%. The figures shown are the results of two or three independent experiments and also the mean of those results. The percentages given in Table 3B in the respective right-hand column for the individual incubation times indicate the percentage activity based on that of the CFDV promoter construct pRT CF4 based on the absolute values for selected constructs which are shown in the respective left-hand columns.

- .15 -  
TABLE 3A

CONSTRUCT	Exp. 1	Exp. 2	Exp. 3	Mean
pRT CF2	4.4	15.8	17.1	12.4
pRT CF3	5.7	14.0	12.6	10.7
pRT CF4	100	100	100	100
pRT CF5	5.1	14.9	-	10.0
pRT CF XS	6.6	20.8	15.9	14.4
pRT 35S	3.6	11.3	8.6	7.8

TABLE 3B

5

CONSTRUCT	10 min		20 min		47 min	
	incubation		incubation		incubation	
pRT CF4	35.560	100	78.900	100	407.400	100
pRT CF5	1.396	3.9	2.900	3.6	12.980	3.2
pRT CF XS	2.040	5.7	4.820	6.1	37.400	9.2
pRT 35S	1.222	3.4	1.766	2.2	6.820	1.7

10 The results shown in Table 3A demonstrate that all CFDV DNA fragments according to the invention are also active as promoters in bacteria and show a higher activity than the CaMV 35S promoter (cf. construct pRT 35S). Compared with the construct pRT CF4, which contains, as promoter, a CFDV DNA fragment which comprises the repeated structures (RPT), the 52-bp-sequence, the TATAA sequence and the stem-loop

15 structure in the region of the nucleotides 941 to 974, but no DNA sections whatsoever of the open reading frames ORF1, ORF2 and also ORF3, the construct pRT 35S with the CaMV 35S promoter only shows less than 10% of the activity of the former.

009T30" 55623460

5 Amended patent claims pursuant to Article 34 PCT

1. CFDV virus DNA fragment which encompasses the stem-loop structure, but not the translation start for the open reading frame ORF1.

10 2. CFDV virus DNA fragment according to Claim 1, which additionally does not encompass the translation start for the open reading frame ORF2.

3. CFDV virus DNA fragment according to Claim 1 or 2, which additionally encompasses the repeated RPT  
15 structures, the 52-bp-sequence and the TATAA sequence.

4. CFDV virus DNA fragment according to Claim 1 or 2, which encompasses the nucleotides 211 to 991, 409 to 991, 611 to 991 or 711 to 991, where, for the purpose of numbering the nucleotides, the 5'-end of the  
20 linearized DNA resulting from cleaving the circular CFDV DNA with the restriction endonuclease XhoI, has been assigned the position 1.

5. DNA fragment, which is derived from one of the CFDV virus DNA fragments according to one of Claims 1  
25 to 4 by substituting, deleting, inserting or modifying individual nucleotides or smaller groups of nucleotides and has a promoter activity which is comparable with that of the starting fragment.

6. Use of one or more DNA fragments according to one of Claims 1 to 5 as promoter.  
30

7. Use of one or more DNA fragments according to Claim 6 as promoter in bacteria, yeasts or fungi.

8. Use of one or more DNA fragments according to Claim 6 as promoter for the tissue-specific expression  
35 of genes in transgenic plants.

9. Use of one or more DNA fragments according to Claim 8 for the phloem-specific expression of genes in transgenic plants.

09462955-051600

10. Use of one or more DNA fragments according to one of Claims 1 to 5 for the generation of chimeric constructs for the transient and stable expression.

11. Transgenic plants, parts of plants, transformed  
5 plant, yeast or bacterial cells obtained using a DNA according to one of Claims 1 to 5.

009750 5562460

# ABSTRACT

Described is the characterization and the use of strong viral promoters for expressing genes, in particular in plants. The invention is based on the surprising finding that specific DNA fragments derived from CFDV DNA (coconut foliar decay virus DNA), which encompass the stem-loop structure, but not the translation start(s) for the open reading frames ORF1 and/or ORF2, have a distinctly higher promoter activity in plants than promoters derived from CFDV DNA which do not correspond to these stipulations.

009163955-051600

1/4

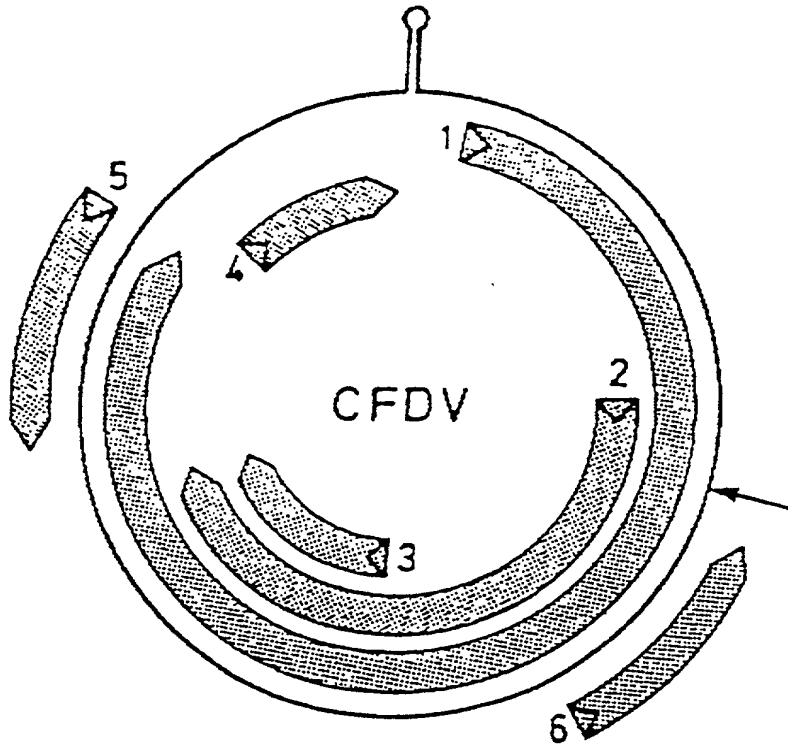


FIG. 1

	A	
T		C
A		T
A		A
T		G
G		C
G		C
G		C
G		C
G		C
G		C
G		C
G		C
A		T

FIG. 2

GEMINIVIRUSES:	---	TAATATTAC	---
CFDV:	---	TAATACTAG	--- (-)
	---	CTAGTATTA	--- (+)

2/4

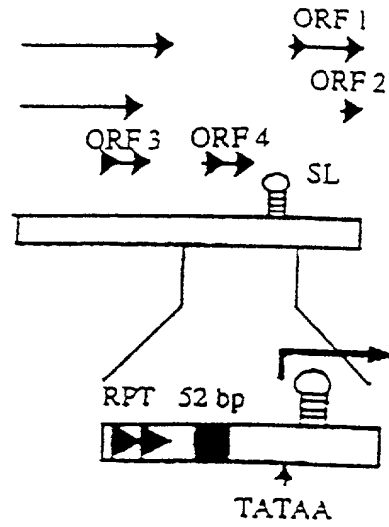


FIG. 3

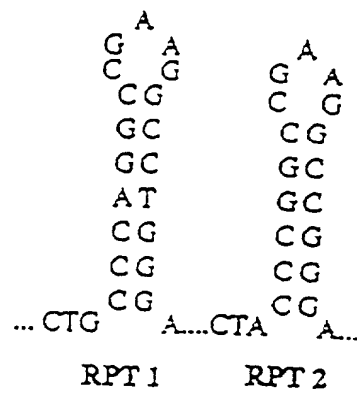


FIG. 4

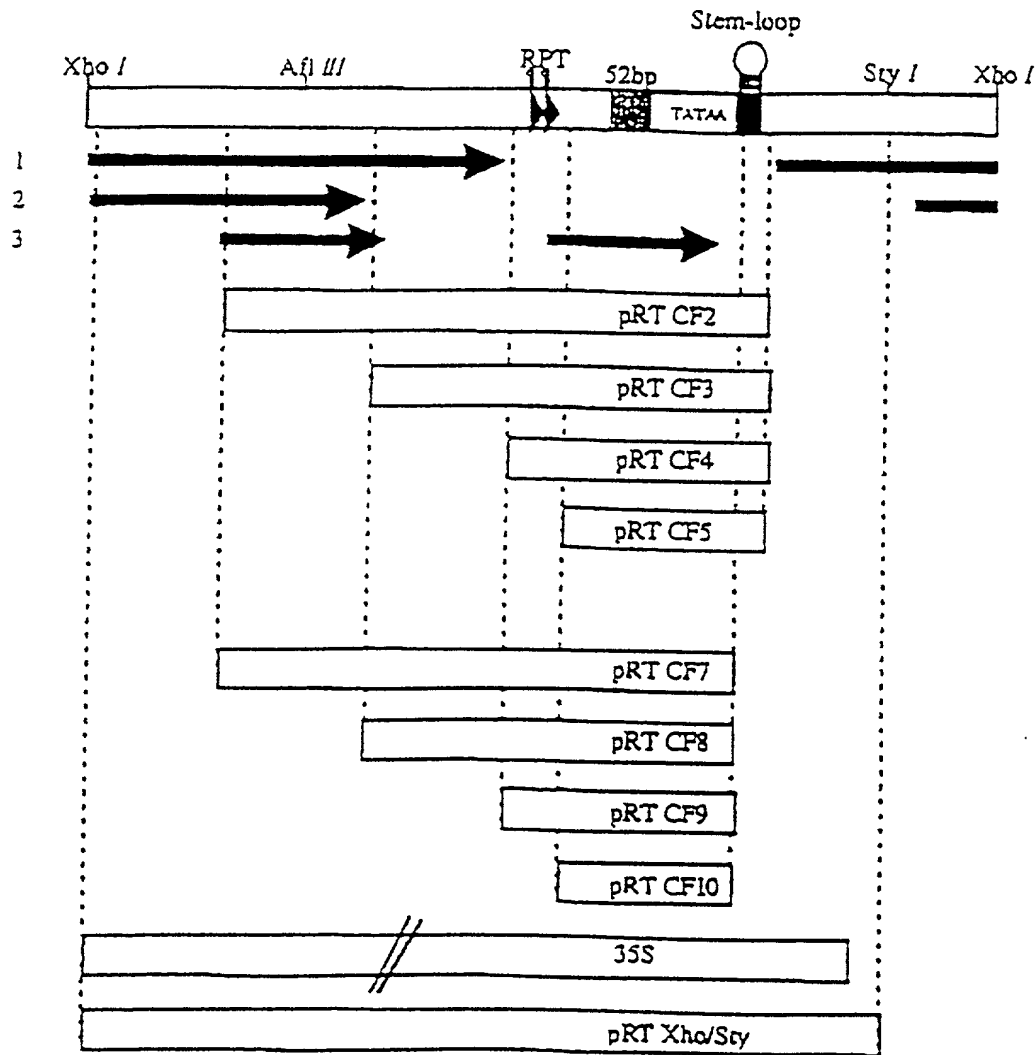


FIG. 5

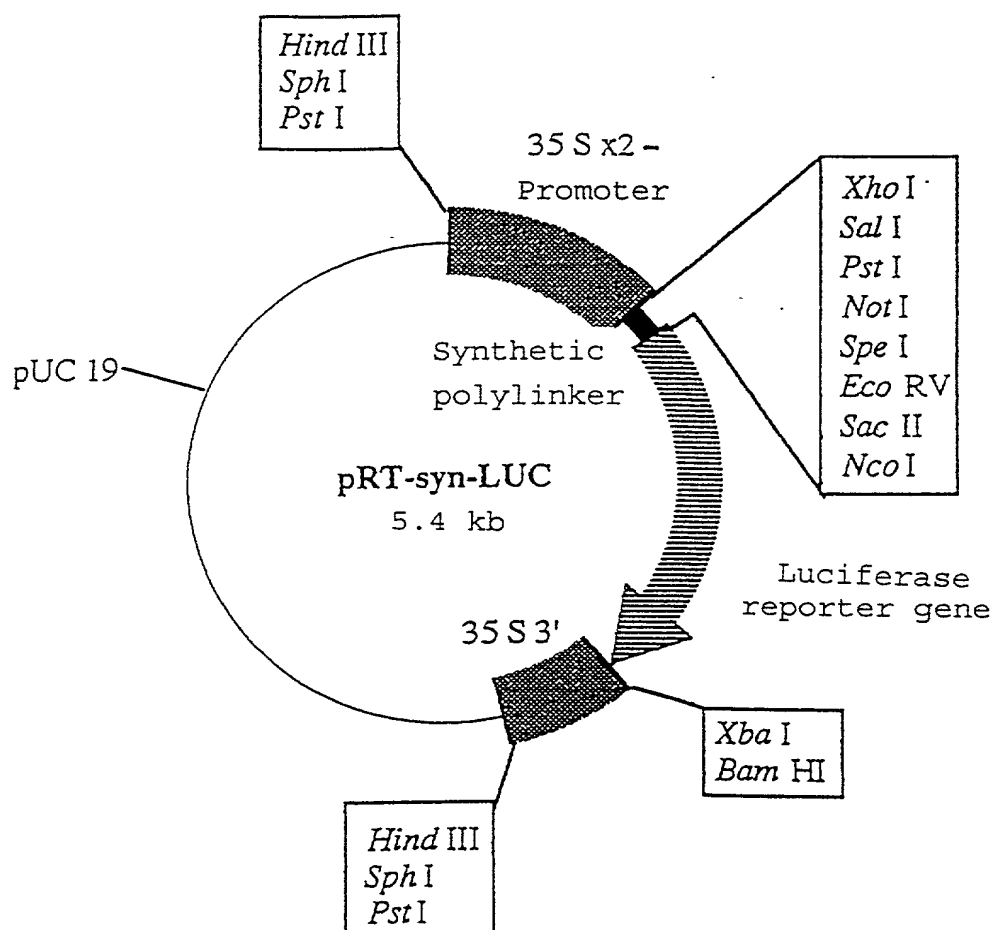


FIG. 6



I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information known by me to be material to the patentability of the claims of this application as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

APPLICATION SERIAL NO.	FILING DATE	STATUS (MARK APPROPRIATE COLUMN BELOW)		
		PATENTED	PENDING	ABANDONED

I hereby appoint the following attorneys and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

William H. Needle	Reg. No. <u>26,209</u>	Jacqueline M. Hutter	Reg. No. <u>44,792</u>
Sumner C. Rosenberg	Reg. No. <u>28,753</u>	Matthew D. Josephic	Reg. No. <u>43,699</u>
David G. Perryman	Reg. No. <u>33,428</u>	David S. Kerven	Reg. No. <u>43,712</u>
Mitchell A. Katz	Reg. No. <u>33,919</u>	Lori L. Kerber	Reg. No. <u>41,113</u>
Gregory J. Kirsch	Reg. No. <u>35,572</u>	Janice A. Kimpel	Reg. No. <u>42,734</u>
Gwendolyn D. Spratt	Reg. No. <u>36,016</u>	Tina W. McKeon	Reg. No. <u>43,791</u>
Nagendra Setty	Reg. No. <u>38,300</u>	Mary L. Miller	Reg. No. <u>39,303</u>
D. Andrew Floam	Reg. No. <u>34,597</u>	Mark A. Murphy	Reg. No. <u>42,915</u>
William R. Johnson	Reg. No. <u>32,875</u>	Lance D. Reich	Reg. No. <u>42,097</u>
Allan G. Altera	Reg. No. <u>40,274</u>	Lisa A. Samuels	Reg. No. <u>43,080</u>
Bryan W. Bockhop	Reg. No. <u>39,613</u>	Lawrence A. Villanueva	Reg. No. <u>43,968</u>
John L. Capone	Reg. No. <u>41,656</u>	Mitchell G. Weatherly	Reg. No. <u>40,864</u>
Kean J. DeCarlo	Reg. No. <u>39,954</u>	Tim T. Xia	Reg. No. <u>45,242</u>
LaVonda R. DeWitt	Reg. No. <u>40,396</u>		

Address all telephone calls to Gwendolyn D. Spratt at telephone no. (404) 688-0770.

Address all correspondence to:

Gwendolyn D. Spratt, Esq.  
NEEDLE & ROSENBERG, P.C.  
Suite 1200, The Candler Building  
127 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1811

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

1-00

Full name of first inventor: WOLFGANG ROHDE

Inventor's signature: \_\_\_\_\_

*W. Rohde*

Date: \_\_\_\_\_

7/3/2000

Residence:

Untergasse 29

Post Office Address:

35418 Buseck, Deutschland DEX

Citizenship:

Germany

2-00

Full name of second inventor: DIETER BECKER

Inventor's signature: \_\_\_\_\_

*Dieter Becker*

Date: \_\_\_\_\_

28.02.2000

Residence:

Stuppstraße 14

Post Office Address:

50823 Köln, Deutschland DEX

Citizenship:

Germany

3-00

Full name of third inventor: JOHN W. RANDLES

Inventor's signature: \_\_\_\_\_

*J. W. Randles*

Date: \_\_\_\_\_

16/3/2000

Residence:

13 Spencer Street

Post Office Address:

Stirling SA 5152, Australien AUX

Citizenship:

Australia

4-00

Full name of fourth inventor: ALAIN HEHN

Inventor's signature: \_\_\_\_\_

*Alain Hehn*

Date: \_\_\_\_\_

04/04/2000

Residence:

Burgstraße 132 10, rue de Gaenwilly

Post Office Address:

51103 Köln, Deutschland 67200 Strasbourg FRX

Citizenship:

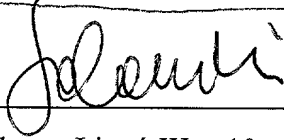
Germany France

009T50" 55629460

5-00  
Full name of fifth inventor:

FRANCESCO SALAMINI

Inventor's signature:



Date: 15.04.2000

Residence:

Carl-von-Linné-Weg 10

Post Office Address:

50829 Köln, Deutschland

Citizenship:

Germany

DEX

009750" 051600